

## REMARKS

### Status of the claims

Claims 1, 2, 8-23, 26, 32, 40, 50, 51, 58, 64, 71, 72, and 79 are pending and claims 8 and 79 are under consideration in this application, claims 1, 2, 9-23, 26, 32, 40, 50, 51, 58, 64, 71, and 72 having been withdrawn as allegedly being drawn to separate inventions. Both claims under consideration stand rejected.

Claims 81 and 82 are added and claim 79 is cancelled. New claims 81 and 82 are supported by the specification, e.g., at page 19, line 22, to page 21, line 7. The amendments to claim 8 are supported by the specification, e.g., by Example 8 at page 123, lines 18-25. None of the amendments made herein add new matter.

After entry of the amendments made herein, claims 1, 2, 8-23, 26, 32, 40, 50, 51, 58, 64, 71, 72, 81, and 82 will be pending and claims 8, 81 and 82 will be under consideration in the application.

### 35 U.S.C. § 112, first paragraph, rejection

Claims 8 and 79 stand rejected as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is more nearly connected, to make and/or use the invention.

In view of the cancellation of claim 79, the rejection is moot in regard to it.

From the comments on page 2, line 10, to page 5, line 7, of the Office Action, Applicants understand the Examiner's position to be that determining whether a breast cancer is likely to be a DCIS or an invasive breast cancer by determining the level of expression of the CTSK gene in a sample from that breast cancer is not enabled by the instant specification.

While not agreeing with this position, Applicants submit that, in view of the amendment to claim 8, the rejection is moot.

Therefore, Applicants respectfully request that the rejection under 35 U.S.C. § 112, first paragraph, be withdrawn.

Applicant : Polyak et al.  
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### CONCLUSION

In summary, for the reasons set forth above, Applicants maintain that the pending claims patentably define the invention. Applicants request that the Examiner reconsider the rejections as set forth in the Office Action, and permit the pending claims to pass to allowance.

If the Examiner would like to discuss any of the issues raised in the Office Action, Applicants' undersigned representative can be reached at the telephone number listed above

Enclosed herewith is a request for an automatic extension of time. Please apply the charge for the extension of time and any other charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 00530-0116US1.

Respectfully submitted,

6/28/10  
Date: \_\_\_\_\_

/Stuart Macphail/

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